

The Board disagrees and finds from the record as it now stands that it is more probably true than not true that claimant's need for back surgery was due to a back injury that arose out of and in the course of her employment with respondent. Consequently, the Board must reverse the basis for the ALJ's denial of claimant's request for preliminary benefits. However, it has been over two (2) years since claimant's surgery. It seems likely that by now she has reached maximum medical improvement and that this case is ready for a regular hearing and final award. If so, claimant may not be in need of ongoing preliminary hearing benefits such as additional medical treatment and would not be entitled to temporary total disability compensation. Furthermore, payment of past

compensation may best be addressed after the record is complete. In any event, that is a decision for the ALJ.¹

In short, the Board remanded the claim to the Judge to determine claimant's present need for medical benefits and entitlement to temporary total disability benefits.

Due to the remand, the parties appeared before Judge Clark on March 17, 2005. On March 18, 2005, the Judge issued an Order, which awarded claimant medical benefits and temporary total disability benefits. Respondent contends the Judge erred and argues this claim is not compensable as it denies (1) claimant sustained personal injury by accident arising out of and in the course of her employment, (2) claimant gave timely notice of the accident or injury, and (3) claimant's present back problems are related to her alleged work-related injury.

Respondent intimates this Board stretched its imagination and suspended all logic in ruling in favor of claimant.

This fact pattern has to stretch the imagination of the Board. To find notice, the Board has to accept discredited testimony and suspend logic. The law requires the Board to make logical conclusions based on a reasonable reading of the evidence. The reasonable conclusion here is that the Claimant did not give notice as required by K.S.A. 44-520.²

In summary, respondent requests the Board to review its earlier findings and reject claimant's request for preliminary hearing benefits.

Conversely, claimant argues respondent has not presented any new evidence regarding the issues it has previously raised and, therefore, the Board should dismiss this appeal. In the alternative, claimant asks the Board to affirm the March 18, 2005, Order.

The issues before the Board on this appeal are:

1. Should the Board review preliminary hearing findings made in earlier appeals when no new evidence was introduced regarding those issues at the later preliminary hearing?
2. If so, did claimant sustain personal injury by accident arising out of and in the course of her employment with respondent?

¹ *Briggs v. MCI Worldcom*, No. 1,003,978, 2004 WL 3094637 at 2 (Kan. WCAB Dec. 23, 2004).

² Respondent's Brief at 9 (filed Apr. 25, 2005).

3. If so, did claimant provide respondent with timely notice of the accident or injury as required by K.S.A. 44-520?
4. And, finally, if so, did claimant prove her present back problems resulted from her injury at work?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes this appeal should be dismissed.

In this appeal from a preliminary hearing Order, respondent raises issues the Board previously addressed in earlier appeals. As indicated above, the Board remanded this claim to the Judge for a decision regarding whether claimant needed ongoing medical treatment and whether she met the definition of being temporarily and totally disabled.

At the most recent hearing, respondent introduced no new evidence that addressed the compensability issues respondent has raised in this claim. Accordingly, the Board's findings that claimant injured her back working for respondent, that she gave timely notice of the accidental injury, and that her present condition was compensable under the Workers Compensation Act are res judicata under the present record and, therefore, not subject to reconsideration at this time. The Workers Compensation Act does not contemplate that parties may pursue multiple appeals of preliminary hearing findings based upon the same record.

Nevertheless, respondent is not without a remedy. Respondent may reserve the above issues for additional consideration at the time of final award, when all preliminary hearing findings are subject to review and to being modified.³

WHEREFORE, the Board dismisses this appeal from the March 18, 2005, preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

³ K.S.A. 44-534a(a)(2).

Dated this ____ day of July, 2005.

BOARD MEMBER

- c: Roger A. Riedmiller, Attorney for Claimant
 Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
 John D. Clark, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director